

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DAVID FREEMAN,)	
)	
Petitioner,)	
)	
v.)	Civil Action Number
)	2:06CV122-MHT-WC
RICHARD F. ALLEN,)	
Commissioner of the Alabama)	
Department of Corrections,)	
)	
Respondent.)	

UNOPPOSED MOTION FOR ENLARGEMENT OF TIME

Comes now Respondent, by and through Troy King, the Attorney General of the State of Alabama, and on behalf of Respondent Richard Allen, respectfully moves this Honorable Court for an enlargement of thirty (45) days, until June 28, 2007, within which to file his procedural default brief. As grounds in support of this motion, Respondent offers the following:

1. This is a federal habeas corpus petition challenging Smith's capital murder conviction and sentence of death. As this Court is aware from prior filings, undersigned counsel became counsel in this case after Cheryl Ann Schuetze became ill, and subsequently left the office. Because the case had experienced

significant prior delays, undersigned counsel has worked diligently at all times to assume his duties in this case with minimal resort to further extensions of time.

2. Undersigned counsel underwent a previously-scheduled surgery on March 26, 2007. As a result of the surgery and subsequent unexpected complications, undersigned counsel has been on sick leave for three weeks since that time.
3. Undersigned counsel also represents the State in 27 other capital murder trials, direct appeals, and post-conviction proceedings. Notable among these cases is Devin Darnell Thompson, (CR-05-0073), in which undersigned counsel must file a brief before the Alabama Court of Criminal Appeals answering 29 separate issues on or before May 15, 2007.
4. Counsel for the State will be unable to prepare an adequate brief by this Court's deadline. Petitioner's Brief On The Merits And In Opposition To Respondent's Brief On Procedural Default is 217 pages in length. Given the level of detail that will be necessary for a response, and undersigned counsel's lack of familiarity with many of the issues in this

case, Counsel needs an additional forty-five (45) days to prepare an adequate procedural default brief.

5. The interests of justice and fairness and this Court's judicial function will best be served by granting the requested enlargement. Likewise, Freeman will not be prejudiced if the request for enlargement is granted.
6. Counsel for the Petitioner does not oppose this motion.

WHEREFORE, for the foregoing reasons, Respondent moves this Court for an enlargement of forty-five (45) days within which to file its procedural default brief, thus making the State's Answer due on or before June 28, 2007.

Respectfully submitted,

Troy King
Attorney General

/s/ Michael A. Nunnelley
Michael A. Nunnelley
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Keir M. Weyble, Christopher Seeds, and Robin Konrad.**

/s/ Michael A. Nunnelley
Michael A. Nunnelley
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May 11, 2007